
(1989) 09 AHC CK 0018
In the Allahabad High Court
Case No : Criminal Revision No. 531 of 1989

State of U.P. and Another	Vs	APPELLANT
Sri Ram Baboo Kesari and Others		RESPONDENT

Date of Decision : 04-09-1989

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 428, 451, 452, 457, 458
Foreign Exchange Regulation Act, 1947 — Section 19A
Forest Act, 1927 — Section 2(4), 20, 20(1), 26, 26(1)

Citation : (1990) CriLJ 87

Hon'ble Judges : S.R. Bhargava, J

Bench : Single Bench

Advocate : A.P. Singh, for the Appellant; A.K. Singh, Bhagwati Prasad and A.D. Giri, for the Respondent

Final Decision : Partly Allowed

Judgement

S.R. Bhargava, J.—This criminal revision is directed against order dt. 7-4-1989 passed by 9th Additional Sessions Judge, Varanasi, directing release of caoutchouc ("Kattha" hereinafter called "Kattha" for sake of brevity) in favour of Opp. Party No. 1 Ram Babu on his furnishing bank guarantee for a sum of Rs. 5 lacs to the satisfaction of the Chief Judicial Magistrate. Parties have exchanged affidavits and the revision has been finally heard with the agreement of the parties at admission stage.

2. Facts giving rise to this revision are that one Jagdish Khalifa, residing in House No. C-2/19 situate in Aurangabad Pandariba, Varanasi, has a son Ashok Kumar Chaurasia (Opp. Party No. 2 in this revision). On 29-4-1988 Officers of the Forest Department accompanied by police raided the aforesaid Premises No. C-2/19 and seized 203 bags containing 5,357 kilograms of Kattha. Ashok Kumar Chaurasia was taken into custody. On 30-4-1988 application for release of Ashok Kumar on bail was moved and it was inter alia alleged that the Kattha seized belongs to the Firm of his father Jagdish Khalifa.

3. It is not disputed that the seizure was purported to be u/s 52 of the Forest Act, 1927 and a report of seizure was made to the Magistrate having jurisdiction to try the offence on account of which the seizure was made. On 4-7-1988 Opp. Party No. 1 Ram Babu Kesari moved application before the Magistrate concerned for release of seized Kattha. His case was that partnership firm M/s. Sri Ram Enterprises, dealing in Supari, Kattha and Kirana etc. came into existence on 10-7-1987. Its head office is in Premis No. D-51/117 Purana Pandariba, Varanasi. Jagdish Prasad Chaurasia (aforementioned Khalifa) and Ram Babu have been partners of the said firm. Premises No. C-2/19 is not only residential house of Jagdish Prasad but is godown of the firm. Kattha seized is stock in trade of the said firm. Applicant Ram Babu relied upon Partnership Deed dt. 6-4-88 on the basis of which the firm was registered with the Registrar of Firms in June, 1988. Certain sales tax papers and documents relating to purchase and payments were also filed.

4. On behalf of the Forest Department and State of U.P. the application for release was opposed. It was contended that the seized Kattha is government property liable to be confiscated. Magistrate had no jurisdiction to release the Kattha. Documents filed by Ram Babu are forged and fictitious and have been prepared only for the purposes of this case. Even these papers do not prove that the seized Kattha was purchased by the firm.

5. Learned Magistrate concluded that the documents filed by Ram Babu are not reliable and at any rate it has not been proved that the seized Kattha was purchased by the firm. Learned Magistrate did not go into the question whether he had jurisdiction to release the Kattha or not. He dismissed the release application.

6. Then Ram Babu went up in revision before Sessions Judge. It appears from the revisional Court judgment that it was inter alia on behalf of Ram Babu that the officers of Forest Department raided the godown illegally and wrongly seized Kattha. Revisional Court did not accept the contention that the Magistrate had no jurisdiction to release Kattha. The revisional Court relied upon Section 457, Cr.P.C. It noted that no confiscation proceedings have been initiated in respect of seized Kattha. Revisional Court further found that firm has been in existence and has been carrying on business of Kattha also. Without discussing the documents in detail and observing that the validity of documents will be touched at the time of final trial, the revisional Court found that the Kattha belongs to the firm which is entitled to its interim custody. Then the revisional Court observed that the Kattha is perishable in nature and may diminish in utility and so in the interest of justice it should be release in favour of the applicant. With these findings the revisional Court allowed the revision and released Kattha as stated earlier.

7. Being aggrieved, State of U.P. and Divisional Forest Officer preferred this revision.

8. On behalf of the revisionist it was vehemently argued that under the Forest

Act the Magistrate and the revisional Court have no jurisdiction of release which can be granted only by the Forest Officer or Government. For adjudicating upon this submission which goes to the root of the case Scheme of Forest Act may be noted. Section 2(4)(a) gives an illustrative definition of "forest produce" as follows :--

" "Forest produce" includes--

(a) the following whether found in, or brought from, a forest or not, that is to say :--

Timber, charcoal, caoutchouc, catechu wood oil, resin, natural varnish, bark, lac, Mahua flower, Mahua seeds, Kuth and myrobalans; and"

9. Section 26 of the Act prohibits certain acts in forest and make them punishable with imprisonment for term, which may extend to six months, or with fine which may extend to Rs. 500/-, or with both, in addition to such compensation for damage done to the forest as the convicting Court may direct to be paid. Section 26(1)(g) runs as under ;--

"Quarries stone, burns lime, or charcoal, or collects, subjects to any manufacturing process or removes, any forest produce;"

10. It is abundantly clear that Section 26 enumerates offences in respect of forest and makes them punishable.

11. It is further evident that according to Section 26(1)(g) mere possession or trade of forest produce is neither prohibited nor an offence. What Section 26(1)(g) prohibits is removal of any forest produce from forest. It is a matter of common knowledge that Kattha is extracted from Khair trees. In Uttar Pradesh, Chapter VIII-A has been added in the Principal Act. Section 51A(a) of this Chapter empowers the State Government to make rules to provide for the establishment and regulation by licence, permits otherwise (and the payment of fees therefore) of saw mills and units including factories engaged in the manufacture or preparation of-- 1(1) Kattha out of Khair tree. This provision further demonstrates that mere possession of Kattha, a forest produce, is not an offence under the Act and the reason is that if a trader directly or indirectly procures Kattha from a factory engaged in the preparation of Kattha, according to rules framed by the State Government, there can be no presumption of removal of forest produce from forest.

12. Section 52 of the Act lays down as under :--

(1) When there is reason to believe that a forest offence has been committed in respect of any forest produce, such produce, together with all tools, boats, carts or cattle used in committing any such offence, may be seized by any Forest Officer or Police Officer.

(2) Every officer seizing any property under this Section shall place on such property a mark indicating that the same has been so seized, and shall, as soon

as may be, make a report of such seizure to the Magistrate having jurisdiction to try the offence on account of which the seizure has been made;

Provided that, when the forest produce with respect to which such offence is believed to have been committed is the property of Government and the offender is unknown, it shall be sufficient if the officer makes, as soon as may be, a report of the circumstances to his official superior."

13. It is obvious from Sub-section (1) that a seizure can be made only when there is reason to believe that a forest offence has been committed in respect of any forest produce "reason to believe" places a lighter burden for proceeding to make seizure. But the burden, however light, has to be discharged and for a seizure u/s 52 it must be shown that before the seizure there was reason to believe that a forest offence has been committed in respect of any forest produce. When the offence is said to be u/s 26(1)(g) and it relates to removal of the forest produce from a forest there must be reason to believe that a forest produce has been removed from a specific forest. It may be stated that "reason to believe" cannot be synonymous with "suspicion". For "reason to believe" there must be some material. So if a Forest Officer or a Police Officer wants to seize forest produce he must have some material to believe that the forest produce has been removed from a specific forest. Then it is evident from Sub-section (2) of Section 52 that the Forest Officer or Police Officer should make the report of seizure justiciable by the Magistrate. This justiciability is dispensed with only when the offender is unknown.

14. Section 53 of the Act lays as under :--

"Power to release property seized u/s 52 :

Any Forest Officer of a rank not inferior to that of a Ranger who, or whose subordinate, has seized any tools, boats, carts or cattle u/s 52, may release the same on execution by the owner thereof of a bond for the production of the property so released, if and when so required, before the Magistrate having jurisdiction to try the offence on account of which the seizure has been made."

15. It is patent in this section that the power of release conferred upon the Forest Officer is not with respect to the forest produce but is confined to tools, boats, carts or cattle seized with forest produce.

16. Then comes the important provision of the Act, namely, Section 54 which relates to powers of the Magistrate before trial. It reads as under:--

"Procedure thereupon-- Upon the receipt of any such report the Magistrate shall, with all convenient despatch take such measures as may be necessary for the arrest and trial of the offender and the disposal of the property according to law."

17. Although Section 53 intervenes between Sections 52 and 54 but it would be more logical to say that Section 54 should be read soon after Section 52 of the Act. Under this Section the Magistrate is required to take necessary steps for

bringing the offender before him and also pass order regarding disposal of the property according to law. All this has to be done before the conclusion of the trial and so it can be safely said that the words "disposal of the property according to law" occurring in this section relate to interim disposal. Dictionary meaning of the word "disposal" is act of getting rid of. Once a seizure report is made to the Magistrate the property should be deemed in the custody of the Court and according to Section 54 the Magistrate is bound to pass interim order for getting rid of property.

18. Section 55 relates to confiscation of the forest produce which is not the property of Government and in respect of which a forest offence has been committed. It lays down--

"Forest produce, tools etc., when liable to confiscation--

(1) All timber or forest produce which is not the property of Government and in respect of which a forest offence has been committed, and all tools, boats, carts and cattle used in committing any forest offence shall be liable to confiscation.

(2) Such confiscation may be in addition to any other punishment prescribed for such offence."

19. Section 56 of the Act relates to disposal of property on conclusion of trial for forest offence. It runs as under :--

"Disposal, on conclusion of trial for forest offence, of produce in respect of which it was committed--

"When the trial of any forest offence is concluded, any forest produce in respect of which such offence has been committed shall, if it is the property of Government or has been confiscated be taken charge of by a Forest Officer, and, in any other case may be disposed of in such manner as the Court may direct."

20. Section 57 relates to disposal of forest produce when offender is not known or cannot be found. In the instant case, it is said that Jagdish Prasad and Ashok Kumar were offenders and they were found at the premises from where Kattha was seized. It is further alleged that at the time of the seizure it was stated by the offender that Kattha was brought from Bihar forest and thus the named offenders confessed their guilt. How far all this is relevant is a different question. Here it would suffice to say that the prosecution story takes out the case from the purview of Section 57.

21. Section 58 relates to disposal of perishable property. It can be quoted as under :

"Procedure as to perishable property seized u/s 52 The Magistrate may not withstanding anything heard in before contained, direct the sale of any property seized u/s 52 and subject to speedy and natural decay, and may deal with the proceeds as he would have dealt with such property if it had not been sold."

22. This provision very clearly lays down that in case of perishable property the only course open to the Magistrate is to direct sale of the seized property. He can, of course, pass orders with respect to interim custody of the sale proceeds.

23. Section 59 provides for appeals against orders under Sections 55 to 57. Section 60 of the Act lays down that after order of confiscation u/s 55 or Section 57 on confirmation in appeal or when no appeal is filed after expiry of period of limitation the property should vest in the Government free from all incumbrances. Section 61 notwithstanding any provision mentioned earlier reserves power for the State Government to authorise any officer to direct at any time the release of any property seized u/s 52.

24. Then there is another important provision which must be brought to the notice of Forest Officers and Police Officers who vexatiously and unnecessarily seize any property on pretence of seizing any property liable to confiscation under this Act. It runs as under :--

Section 62. "Punishment for wrongful seizure-- Any Forest Officer or Police Officers who vexatiously and unnecessarily seizes any property on pretence of seizing any property liable to confiscation under this Act shall be punishable with imprisonment for a term which may extend to 6 months, or with fine which may extend to Rs. 500/- or with both."

25. It has been seen above that according to Section 52 a Forest Officer or a Police Officer can seize forest produce only when there is reason to believe that a forest offence has been committed in respect of any forest produce. If there is no reason to believe that a forest offence has been committed, the seizure of forest produce will not only be illegal but shall also be vexatious and unnecessary. Such a seizure may invite prosecution of the Forest Officer or Police Officer and plead that the seizure was made under direction from superior authority shall be no defence.

26. Then comes the last important and relevant provision of the Act. It is regarding presumption attached to the forest produce. It runs as under :--

Section 69. "When in any proceedings taken under this Act, or in consequence of anything done under this Act, a question arises as to whether any forest produce is the property of the Government, such produce shall be presumed to be the property of the Government until the contrary is proved."

27. This is all relevant to the scheme of the Act. Section 55 of the Act makes other than forest produce, which is not Government property, liable to confiscation as an additional deterrent, Section 56 authorizes the Magistrate or the Court to pass final order regarding disposal of forest produce on the conclusion of the trial. After report to the Magistrate and during trial there are only two provisions relating to disposal of the property. They are Sections 54 and 61. Section 61 of the Act has special feature as it confers power of release, before, during and after trial. It does not abridge power of the Magistrate of

disposal during trial. A Government or a Government Officer has to be presumed benevolent and always prepared to honour the Court and its orders. There can be no presumption that even when the matter is subjudice they will pass an order prejudicing the trial. If before the trial the Government or any other officer directed by the Government wants to finally release the forest produce it can withdraw the prosecution and after order of the Court regarding withdrawal of prosecution it can pass order of release. But by no stretch of imagination it can be said that Section 61 of the Act abridges the power of the Magistrate to dispose of the property according to law before trial. Here at the risk of repetition it may be said that in Section 54 disposal means interim custody.

28. Then the question arises about meaning of the phrase "according to law" occurring in Section 54. Here comes the question of applicability of the Criminal P.C. in respect of the forest offences made punishable under the Act. It is obvious that in the Act procedure of trial in respect of forest offences has not been given. It is also obvious that although in Section 54 of the Act Magistrate has been conferred the power to pass orders relating to interim custody of the property, yet the detailed procedure relating to interim custody has not been given. Section 5 of Criminal P.C. lays down :--

"Nothing contained in this Code shall, in the absence of a specific provision to the contrary, affect any special or local law for the time being in force, or any special jurisdiction or power conferred, or any other form of procedure prescribed, by any other law for the time being in force."

29. Since no procedure regarding orders for interim custody, of seized property before the conclusion of the trial and procedure of trial have been given in the Forest Act (a Special Act), Section 5 of the Code cannot prohibit the criminal courts from applying provisions of Criminal P.C. with regard to orders of interim custody, orders of final disposal of property at the time of conclusion of trial and procedure for trials and appeals, revisions and references.

30. Then there are Sections 451, 457, 458 of Cr. P.C. regarding disposal of the property. Section 451, inter alia, relates to property subject to speedy and natural decay. Since there is specific provision in the Forest Act for disposal of such property, namely, sale u/s 57 of the said Act, for passing order regarding interim custody Magistrate cannot take recourse to part of Section 451 relating to property subject to speedy and natural decay. For the same reason a Magistrate cannot take recourse to Section 459, Cr.P.C. Sec. 451, Cr. P.C. relates to property produced before any criminal court during any enquiry or trial and empowers the Court to pass order for proper custody of such property ending the conclusion of the enquiry or trial. It may be said that after seizure of the property u/s 52(1) of the Forest Act only a report of seizure is made to the Magistrate and property is not produced before him and so the Magistrate has no jurisdiction to invoke Section 451, Cr. P.C. Section 457, Cr.P.C. relates to seizure of any property by any Police Officer which is reported to a Magistrate and such property is not produced before the Magistrate. It is significant to note that Sec.

52(1) of the Forest Act authorises both the Forest Officer and Police Officer to make seizure of the property. If the seizure is by police there can be no difficulty in saying that report to the Magistrate about such seizure would attract Section 457, Cr.P.C. In case of seizure by Forest Officer it can be argued that since the seizure is not by a Police Officer Section 457, Cr. P.C. does not come into play. Wisdom has to be attributed to Parliament and law framers. It has to be presumed that the law framers were conscious of such anomaly and for removal of the anomaly words "according to law" were used in Section 54 of the Forest Act. In my opinion words "according to law" occurring in Section 54 of the Forest Act do not attract Section 5 of the Criminal P.C. and do not oust applicability of Section 457 of the Code. Thus Section 457, Cr.P.C. is not inconsistent with Section 54 of the Forest Act. It is concluded that u/s 54 of the Forest Act read with Section 457 of Criminal P.C. Magistrate has power to pass order relating to interim custody even with respect to forest produce.

31. It was vehemently contended on behalf of the revisionist that if the property is disposed of at interim stage nothing shall be left for confiscation. This argument in relation to an interim custody is misplaced. It has only arisen because in his order the Sessions Judge used the word "release". No doubt final release can be made only at the conclusion of the trial or by the Government u/s 61 of the Forest Act. Yet in view of Section 54 of the Forest Act, as discussed above, order relating to interim custody of the property u/s 457, Cr.P.C. can be passed. When property is handed over to a person after Bank Guarantee it cannot be said that any final order regarding disposal has been passed or that the property shall not be available for confiscation at the time of conclusion of the trial.

32. On behalf of the revisionist reliance was placed on the case of Divisional Forest Officer and Another Vs. G.V. Sudhakar Rao and Others, The case related to property seized under Andhra Pradesh Forest Act. That Act contains special provision and machinery for confiscation proceeding u/s 44(2a). Prosecution was pending. At the same time confiscation proceeding u/s 44(2A) of the said Act was initiated. On petition u/s 482 of Criminal P.C, High Court stayed confiscation under inherent powers. It was held that since there was a provision for separate machinery for confiscation, confiscation proceeding could not be stayed under inherent powers. The question arising in that case was altogether different. It is also evident that scheme of Andhra Pradesh Forest Act is not *par materia* with the scheme of Forest Act applicable to U.P. In paragraph 11 of the judgment their Lordships of the Supreme Court after considering the scheme of Andhra Pradesh Forest Act observed (Para 11):--

"True it is, where any property is produced by an officer before a Criminal Court in an inquiry or trial, the Court may u/s 451 of the Criminal P.C, 1973 make any direction, as it thinks fit, for the proper custody of such property pending the conclusion of the inquiry or trial. At the conclusion of the inquiry or trial, the Court may also u/s 452 of the Code make an order for the disposal of the

property produced before it and make such other directions as it may think necessary. Where the property is not produced before a Criminal Court in an inquiry or trial, the Magistrate is empowered u/s 457 of the Code to make such order as he thinks fit, respecting the disposal of the property. The general provision of Section 452 of the Code with regard to disposal of property by a Criminal Court such as by destruction, confiscation or delivery to any person claiming to be entitled to possession thereof and that of Section 457 investing a Magistrate to make an order for disposal of property seized by a Police Officer and not produced before a Criminal Court during an inquiry or trial, must necessarily yield where a statute makes a special provision with regard to forfeiture of any property and its disposal. In the instant case, admittedly, the illicitly felled teak trees seized by the Forest Range Officer, Adilabad were produced by him before the Divisional Forest Officer, Hyderabad who is the Authorized Officer under Sub-section (2A) of Section 44 of the Act, along with a report by him under Sub-section (2) thereof that he had reason to believe that a forest offence had been committed by the respondents. Merely because the Forest Range Officer also later lodged a complaint before the learned Metropolitan Magistrate for trial of the respondents for commission of offences under Sections 20(1)(c)(iv) and (x) and 29(1)(d) read with Section 29(4)(a)(ii) of the Act, did not imply that the Authorised Officer was bereft of his power, and authority to direct confiscation of the seized timber and the implements, etc., under Sub-section (2a) of Section 44 of the Act if he was satisfied that a forest offence had been committed."

33. Their Lordships after considering the various provisions of the Andhra Pradesh Forest Act came to the conclusion that there is no doubt that the intendment of the legislature was to provide for two separate proceedings before two different forums and there is no conflict of jurisdiction as Section 45, as amended by the Amendment Act, in terms curtails the power conferred on the Magistrate to direct confiscation of timber or forest produce on conviction of the accused.

34. Their Lordships proceeded to observe (Para 12):-

"The conferral of the power of confiscation of seized timber or forest produce and the implements, etc. on the Authorized Officer under Sub-section (2a) of Section 44 of the Act on his being satisfied that a forest offence had been committed in respect thereof, is not dependent upon whether a criminal prosecution for commission of a forest offence has been launched against the offender or not. It is a separate and distinct proceeding from that of a trial before the Court for commission of an offence. Under Sub-section (2A) of Section 44 of the Act, where a Forest Officer makes report of seizure of any timber before the Authorized Officer along with a report u/s 44(2), the Authorized Officer can direct confiscation to Government of such timber or forest produce and the implements, etc., if he is satisfied that a forest offence has been committed, irrespective of the fact whether the accused is facing a trial before a Magistrate

for the commission of a forest offence u/s 20 or 29 of the Act."

35. In the Forest Act only the Criminal Courts have been invested with power of confiscation and no separate procedure or machinery has been contemplated for confiscation. The Criminal Court under the Act can order confiscation of the property only on the conclusion of the trial. To my mind at the risk of repetition it can be said that even the case relied upon by the revisionist does not make the provisions of Section 54 of the Forest Act inconsistent with Section 457 of the Criminal P.C.

36. Then on behalf of the revisionist reliance was placed on the case of State, by Nilratan Sircar, Enforcement Officer Vs. Lakshmi Narain Ram Niwas, case related to Foreign Exchange Regulation Act (1947). Section 19A of the said Act conferred special power upon the Director of Enforcement to retain documents on certain conditions. In view of this provision it was held that it is not correct to say that the Magistrate can exercise this powers under the Code in connection with property seized. In the Forest Act there is special provision namely, Section 54, which has already been considered, and there is no provision in the Act empowering the Forest Officer or the Government to retain the seized property. Hence a case under Foreign Exchange Regulation Act (1947) cannot help the revisionist.

37. Further the revisionist cited the case of Anand Singh Bishit v. Union of India 1986 Cri LJ 563 the case related to conviction and sentence under Border Security Force Act. Considering the provisions of the Act, it was held that there is no provision in the said Act or the Rules operating in the area of Section 482, Cr.P.C. so as to override the latter and as such it must be held that the beneficent provision of Section 428 is fully and totally applicable to sentence imposed under the Act. In my view this case leans more towards the situation that due to absence of any special provision in the Forest Act overriding the effect of Section 457, Cr.P.C, the Magistrate has jurisdiction to pass order regarding interim custody u/s 457, Cr.P.C.

38. Similarly cases of Sukhdeo Singh Hon'ble C.J. AIR 1954 SC 186 : 1954 Cri LJ 460 The Central Talkies Ltd., Kanpur Vs. Dwarka Prasad, and Delhi Administration Vs. Ram Singh, relating to other special Acts having different provisions can have little bearing with this case.

38A. Then the question arises whether on the facts and circumstances seized Kattha could have been delivered to opposite party -No. 1 Ram Babu on his furnishing Bank Guarantee. The first question which deserves attention is whether any forest offence has been committed with respect to the Kattha in question. All that could be said on behalf of the revisionists in this Court is that during seizure Ashok Kumar and his father Jagdish admitted that Kattha was brought from Bihar jungles. According to the prosecution story itself the seizure was made by a party consisting of Forest Officer and Police. When the Police is at the spot and any statement is made during the presence of the Police that

statement cannot be called admissible under the Evidence Act. Annexure 1 of the counter-affidavit is memorandum of authorisation for search and seizure at Premises No. C2/19. Even in this memorandum of authorization only this much was said that a forest produce illegally removed from Government jungle is stored in the premises. The jungle from which the Kattha or the forest produce was said to have been illegally removed was not specified. Allegation that forest produce has been illegally removed from a Govt. jungle is a vague allegation amounting to suspicion and cannot constitute a forest offence. Then it is in the prosecution story itself that Kattha was seized from the premises of Jagdish Khalifa and Ashok Chaurasia none-else than the son of Jagdish Khalifa. This would mean that the Kattha was seized from the possession of Jagdish Khalifa. As early as on 30th Aprl., 1988 Ashok Chaurasia had asserted that the Kattha belongs to the firm of his father. There is Partnership Deed dt. 6th Aprl, 1988 executed by Jagdish and Ram Babu. It was narrated in this Deed that they had been carrying on the partnership business from 7th July, 1987 and were executing the Deed for putting everything in writing. According to this Deed Premises No. D-51/115 of Puran Pan Dariba was to be office of the firm and its godown was to be in premises No. C-2/19. A partner represents the firm. Possession of one partner is possession of another. Kattha thus alleged to have been seized from the premises of Jagdish Khalifa could itself be called seizure from possession of Ram Babu also. There were some documents relating to purchase of Kattha. They did not cover whole of the seized Kattha. The Magistrate commented upon them to be subsequent documents. May it be as it is said. But it should not be forgotten that presumption u/s 69 of the Forest Act relating to ownership of the Government to the forest produce is a rebuttable presumption and it can be rebutted at any time before order of confiscation. This is not stage where it should be finally decided whether Ram Babu rebutted the presumption u/s 69 of the Forest Act by adequate evidence. Here it would suffice to say that Kattha in question, with respect to which no specific forest offence is attached, was in possession of a Partnership firm of which opposite party Ram Babu and Jagdish Khalifa are partners. Hence Ram Babu is the person best entitled to possession of Kattha. But possession can be delivered to him only for the interim period without treating him and his alleged partner as finally adjudicated owners.

39. So the next question that arises is whether the condition imposed for delivery the Kattha to applicant Ram Babu is according to law. The price of the Kattha should remain available for confiscation. Parties are at variance about the price of the Kattha. In rejoinder affidavit it was said that Kattha can fetch price of more than Rs. 200/- per kg. But that can be only in respect of small lots. For big lots, price is apt to be lesser. Considering all the circumstances I am of the opinion that the ends of justice will be effectively served by raising the Bank Guarantee to be furnished by Ram Babu to Rupees, Seven lacs and fifty thousand (Rs. 7,50,000/-).

In the result, this revision is partly allowed. The Kattha in question shall be

delivered to Ram Babu on furnishing a Bank Guarantee of Rs. 7,50,000/- (Rupees seven lacs fifty thousand) by Ram Babu to the satisfaction of C.J.M. Varanasi. In case the Kattha in question is ultimately confiscated State Government or the appropriate authorities of the Forest Department shall be entitled to enforce the Bank Guarantee.